

NATIONAL PRETREATMENT PROGRAM

ADDENDUM TO THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
MEMORANDUM OF AGREEMENT
BETWEEN THE
NORTH DAKOTA DEPARTMENT OF HEALTH
AND THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII

Section I. General

The Memorandum of Agreement (MOA) between the North Dakota Department of Health (Department) - Division of Water Quality and the Regional Administrator of the United States Environmental Protection Agency (EPA), approved on or around June 13, 1975 and modified on or about January 18, 1990, is hereby modified to define Department and EPA responsibilities for the establishment, implementation, and enforcement of the National Pretreatment Program pursuant to §§ 307 and 402(b) of the Clean Water Act (Act) as follows.

Section II. Policies

The Department has the primary responsibility for the implementation of the National Pretreatment Program in North Dakota and will administer the National Pretreatment Program in accordance with § 402 of the Act, U.S.C. § 1251 *et. seq.*, applicable state legal authority, applicable federal regulations, the State/EPA Performance Partnership Agreement (PPA), the North Dakota Pretreatment Program Description, this MOA, and any other State/EPA agreements regarding the Industrial Pretreatment Program. All agreements shall be consistent, however, with the basic requirements of this MOA which shall take precedent over any other agreements per the requirements of 40 CFR § 123.24.

Section III. Program Implementation Responsibilities

The Department has primary responsibility for ensuring:

- a. Application and enforcement of any Pretreatment Standard or Requirement established by the Administrator in accordance with §§ 307(b) and (c) of the Act and State standards;
- b. Application and enforcement of prohibited discharges and categorical standards and requirements (40 CFR §§ 403.5 and 403.6);
- c. Incorporation of National Pretreatment Standards and Requirements, as appropriate, into the North Dakota Pollutant Discharge Elimination System (NDPDES) rules, N.D.A.C. Ch. 33-16-01;

- d. Incorporation of Publicly Owned Treatment Works (POTW) pretreatment program conditions in NDPDES permits issued to POTWs as required in 40 CFR § 403.8 and as provided at § 402(b)(8) of the Act;
- e. Identification of POTWs requiring local pretreatment programs;
- f. Incorporation of requirements for development and implementation of local limitations in NDPDES permits issued to POTWs with approved local programs as set forth at 40 CFR § 403.5 and as provided at § 402(b)(8) of the Act consistent with the latest Revision of the Region 8 Strategy for Local Limits Development;
- g. Review and approval or denial of POTW pretreatment program submittals in accordance with the procedures set forth at 40 CFR §§ 403.8, 403.9, 403.11 and 403.18, except that no POTW pretreatment program shall be approved if EPA objects to program approval per the provisions of 40 CFR § 403.11;
- h. Process and publish, where appropriate, all pretreatment program approvals and program modifications in accordance with the requirements of 40 CFR § 403.11 and 40 CFR § 403.18;
- i. Incorporation of applicable Pretreatment Standards, including prohibited discharges and categorical standards and requirements, local limitations, State standards, and industrial monitoring and reporting requirements set forth at 40 CFR § 403.12, into permits issued to Significant Industrial Users not regulated by approved POTW pretreatment programs;
- j. Inspection, surveillance, and monitoring procedures consistent with the annual workplan, which will determine, independent of information supplied by the POTW, compliance or noncompliance by the POTW with pretreatment conditions incorporated into the POTW NDPDES permit; oversight of POTW pretreatment programs to verify that Pretreatment Standards and Requirements are enforced in accordance with 40 CFR §§ 403.8, 403.11, and 403.12; and audits of approved pretreatment programs conducted at least once per five years;
- k. Inspection, surveillance, and monitoring procedures which will determine, independent of information supplied by the industrial user, whether the industrial user is in compliance with applicable Pretreatment Standards, monitoring, and reporting requirements;
- l. The Department shall utilize EPA Region VIII's standard operating procedures for Pretreatment Program audits and Pretreatment Compliance Inspections until such time as the Department develops specific procedures that are approved by EPA;
- m. Initiating an enforcement action, in a timely and effective manner, against persons in violation of Pretreatment Requirements and Standards. This includes, but is not limited to, violations identified through inspection activities, monitoring, or surveillance activities.

The Department shall maintain procedures for receiving and ensuring proper consideration of information submitted by the public and EPA about violations. If EPA determines that the Department has not initiated timely and appropriate enforcement action against a violator, EPA may proceed with any or all of the enforcement options available under § 309 of the Act after notice to and consultation with the Department. Prior to proceeding with a formal enforcement action, EPA shall notify the Department as specified in procedures already established for the NPDES Program.

The Department agrees to employ a state penalty policy corresponding to the spirit of the EPA Civil Penalty Policy as established in the Memoranda of the Assistant Administrator for Enforcement (February 11, 1986) or any revisions thereto, and Guidance on Penalty Calculations for POTW Failure to Implement an Approved Pretreatment Program as established in the Memoranda of the Director of Water Enforcement and Permits (December 22, 1988) or any revisions thereto. EPA will supply the Department with a copy of these memoranda and any subsequent additions or revisions thereto;

- n. Review and certification of requests from industries or POTWs for industrial subcategory determinations in accordance with those procedures established at 40 CFR § 403.6(a). The Department shall forward a copy of its decision to EPA. EPA may modify the Department's category determination within 60 days of EPA's receipt thereof. All final determinations shall be provided to the POTW and industrial user, and the Department or EPA, as appropriate;
- o. Review POTW removal credit submittals for revised discharge limits for industries who are or may be subject in the future to categorical pretreatment standards. Procedures for review of removal credit submittals shall comply with all applicable requirements and procedures identified at 40 CFR §§ 403.7 and 403.11. Where the state intends to approve a removal credit application, the state shall provide the removal credit application, the state's analysis, and any supporting material to EPA for review as allowed for under 40 CFR § 403.7(e)(6);
- p. The Department shall review requests for Fundamentally Different Factor (FDF) variances in accordance with those procedures established at 40 CFR § 403.13. The Department may make an initial finding on any FDF variance requests, and in cases where the Department supports the variance, submit its findings together with the request and supporting information to EPA for final review. The Department shall not approve or in any way implement an FDF variance without the written approval of EPA. The Department may deny requests for FDF variances without EPA review;
- q. The Department shall utilize EPA Region VIII's standard operating procedures for industrial waste surveys, local limits development, and POTW annual reports, until such time as the Department develops specific procedures that are approved by EPA;

- r. The Department shall make every effort to ensure that the pretreatment coordinator or designee attend and represent the Department at the EPA Region VIII annual pretreatment conference.

EPA is responsible for assuring that the Pretreatment Program is consistent with all requirements of this MOA, the PPA, and applicable sections of 40 CFR § 403. EPA responsibilities shall include the following:

- s. Provision of technical assistance to the Department concerning program implementation issues such as local limits development, categorical standards implementation, trucked and hauled waste, Fundamentally Different Factor (FDF) variances, Category Determinations, Removal Credits, and other technical and procedural guidance and strategies;
- t. EPA may perform annual state Pretreatment Program audits to identify major program deficiencies and appropriate remedial actions. Pretreatment Program audits incorporate comprehensive review of all phases of the Pretreatment Program including, but not limited to, statutory authority, regulatory requirements, procedures, activities, and program resources. Pretreatment Program audits will take place at the offices of the Department at such times as are mutually agreed by EPA and the Department. EPA will prepare and transmit to the Department a report summarizing the results of the Pretreatment Program audit which identifies any deficiencies noted as a result of the audit and any associated remedies;
- u. PA may perform quarterly review of annual commitments in the PPA to evaluate progress and to resolve program implementation issues. Quarterly reviews will incorporate:
 - (i) Review of any information transmitted from the Department to assure that all the requirements of this MOA are met;
 - (ii) Review of data handling, permit processing, compliance monitoring, and enforcement procedures, including both manual and automated data processing; and
 - (iii) Examination of selected Department files to determine consistency of Pretreatment Program implementation with federal requirements. File reviews are intended to address propriety, timeliness, and efficacy of enforcement actions.
- v. EPA may conduct oversight inspections to evaluate the Department compliance inspection program as mutually agreed in the PPA. Additionally, EPA may determine that pretreatment inspections or monitoring beyond those performed by the Department are necessary or appropriate. The EPA shall notify the Department of such

determination. EPA may request the state to conduct such inspections or monitoring or, should the state decline, EPA may perform the inspection or monitoring alone without state participation. Should the state choose not to conduct additional inspections or monitoring, EPA will fully inform the state of such inspections or monitoring. EPA shall provide notice to the state fourteen (14) days prior to an inspection or monitoring of a POTW. Exceptional circumstances, such as incipient endangerment of public health, environmental damage, or potential criminal wrongdoing, may preclude such notice. When inspection or monitoring is conducted solely by the EPA, a copy of any inspection reports or sampling results will be forwarded to the Department within 45 days of completing the inspection;

- w. EPA will perform ongoing review of state pretreatment compliance and enforcement actions. Such review may result in direct EPA enforcement actions, upon closure of the state action, where indicated. Any such action will conform with the procedures specified at Section III (m) of this agreement as set forth previously;
- x. EPA may at any time review the Pretreatment Program's public participation policies, practices, and procedures.

Section IV. Reporting and Transmittal of Information

The Department shall provide the following information to EPA:

- a. A copy of all inspection reports prepared by the Department as part of the Pretreatment Program to the Permits Team (8P-W-P), ATTN: Pretreatment Coordinator at EPA, Region 8. All Department inspections will be entered into the Pretreatment Permit and Enforcement Tracking System (PPETS) database of the Permit Compliance System (PCS);
- b. A copy of each annual report submitted by approved pretreatment programs to the Permits Team (8P-W-P), ATTN: Pretreatment Coordinator at EPA Region 8. This requirement is not applicable where EPA and the state require the POTWs to submit copies to both agencies as a part of the annual report reporting requirement;
- c. The Department will enter all appropriate PPETS data into the PCS system (for audits, Pretreatment Compliance Inspection, annual reports, and any other required report or action as defined by EPA);
- d. When a public notice, as required in the Pretreatment Regulations, is issued, the Department will transmit a copy of the public notice to the Permits Team (8P-W-P), ATTN: Pretreatment Coordinator at EPA, Region 8. The state need not provide a copy of the submittal being approved except in the case of local limits. In this case, the state shall provide a copy of the submittal to EPA;

- e. Where the Department approves a non-substantial pretreatment modification, the Department shall send a copy of the approval letter to the Permits Team (8P-W-P), ATTN: Pretreatment Coordinator at EPA Region 8;
- f. Upon request, copies of all notices received from POTWs relating to a changed introduction of pollutants to the POTW;
- g. A copy of any enforcement action against a POTW with an approved pretreatment program or against an industrial user located in an approved pretreatment program's jurisdiction to the Permits Team (8P-W-P), ATTN: Pretreatment Coordinator at EPA Region 8.

EPA will provide the following information to the Department:

- h. Upon approval of the State of North Dakota's Pretreatment Program, the EPA shall transmit to the Department all data relevant to North Dakota concerning the Pretreatment Program which has not already been transmitted to the Department;
- i. Upon approval of the State of North Dakota's Pretreatment Program, the EPA will provide the Department with a listing of those industries which are located in North Dakota and have been directly regulated by EPA as the Control Authority. In addition, the EPA will provide the Department with a summary of the compliance status of these industries. Prior to transmittal of Control Authority status for these industries to the state, EPA will complete any enforcement activities against these industries open at the time of program approval;
- j. Upon approval of the State of North Dakota's Pretreatment Program, the EPA will provide the Department with a listing of those POTWs which are located in North Dakota and have been directly regulated by EPA as the Approval Authority. In addition, the EPA will provide the Department with a summary of the compliance status of these POTWs. Prior to transmittal of Approval Authority status for these POTWs to the state, EPA will complete any enforcement activities against these POTWs open at the time of program approval.

Section V. Program Revision

Either party to this MOA may initiate program revisions when necessitated by changes to federal or state statute. Procedures for program revision shall comply with the provisions set forth at 40 CFR § 123.63.

Section VI. Miscellaneous

The Department and EPA will communicate, through the PPA, commitments and priorities for program implementation including commitments for inspection of POTWs and industrial users. The annual workplan will contain, at a minimum, the following:

- a. A list of permits to be issued by the Department to POTWs and industrial users subject to Pretreatment Standards and requirements; and
- b. A list of POTWs and industrial users to be audited or inspected with projected time frames.

Section VII. Other Provisions

Nothing in this agreement is intended to affect any Pretreatment Standard or Requirement, including any standards or prohibitions established by state or local law, as long as the state or local requirements are not less stringent than any set forth in the National Pretreatment Program or other requirements or prohibitions established under the Act or federal regulations.


Nothing in this Amendment shall be construed to limit the authority of the EPA to take action pursuant to §§ 204, 208, 301, 307, 308, 309, 311, 402, 404, 405, 501, or other sections of the Act (33 U.S.C. § 1251 et. seq.).

Section VIII. Approval and Effective Date of Agreement

This Memorandum of Agreement shall take effect upon approval by the Administrator of the Environmental Protection Agency.

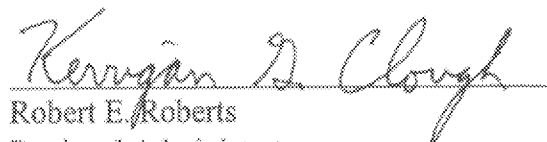
In witness thereof, the parties execute this agreement.

FOR STATE:


L. David Glatt, Chief
Environmental Health Section
North Dakota Department of Health

9/5/05
(Date)

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:


Robert E. Roberts
Regional Administrator
Region VIII

9/8/05
(Date)